

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 323/10  
5305717

BETWEEN                      DENISE WILKIE  
   Applicant  
  
AND                                KUDOS AIRPORT  
   APARTMENTS LTD  
   Respondent

Member of Authority:      Alastair Dumbleton  
  
Representatives:            Paul Craggs, advocate for Applicant  
   No appearance for respondent  
  
Investigation Meeting:     12 July 2010  
  
  
  
  
Determination:              13 July 2010

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]     The applicant Ms Denise Wilkie lodged a statement of problem in the Authority on 13 May 2010. She claimed to have been unjustifiably dismissed from her employment with Kudos Business Apartments Ltd, which is the name the respondent company Kudos Airport Apartments Ltd was formerly registered under until January 2010.

[2]     Service of the application on the company drew a response from its director, Mr Peter Nathan, who advised by email that the company was insolvent and had ceased trading. He said he could see no point in filing a statement in reply, as the company had no assets and its liabilities exceeded \$700,000.

[3] Before the Authority became involved the parties had attempted to resolve the problem by mediation held in February 2010.

[4] Mr Nathan was contacted to arrange a telephone conference with him but he did not wish to participate when it took place. I am satisfied that the notice of the investigation meeting dated 17 June 2010 was served on the respondent company at its registered address. There was no appearance for the respondent on 12 July 2010, either by Mr Nathan or any other representative of the company.

[5] The evidence of Mrs Wilkie was taken. From it I find that in April 2008 she entered into a written employment agreement with the respondent for the position of Housekeeper at its airport apartments business. Her rate of pay was initially \$15 per hour but after about three months this was increased to \$18 per hour.

[6] A written agreement, signed on 1 April 2008 provided that the ordinary hours of work were to be 15 per week up to a maximum of 40 hours, on the days Monday to Saturday inclusive.

[7] From commencement of work in 2008, Mrs Wilkie worked at least 40 hours and usually more, up until Monday 30 November 2009. On that day at about 8pm in the evening she received an email from Mr Nathan which said:

*Hi Denise*

*I would like you to work 15 hours this week – 7 hours on Wednesday and 8 hours on Thursday.*

*As you know the slow down in the economy has resulted in very poor occupancy. As a result it is necessary to terminate your employment.*

*Please accept one weeks notice to terminate your employment on Wednesday 9th December 2009 – you will be required to work 7 hours on Tuesday the 8th December and 8 hours on Wednesday the 9th December.*

*Thank you.*

*Peter Nathan*

[8] The provisions of the written employment agreement at Clause 5(c) permitted the employer to alter the hours and times of work by giving no less than one weeks notice. This provision was breached in the notice sent by Mr Nathan, which gave Mrs Wilkie less than two days notice that her hours would be reduced from over 40 per week to just 15.

[9] The notice of termination was given in compliance with another express provision of the agreement, Clause 11(a), which permitted the employer to give one weeks notice in writing. This same period was required where redundancy was the reason for termination.

[10] The reason for termination given by Mr Nathan was a slow down in the economy resulting in poor occupancy of the apartments managed by the company. It may reasonably be assumed that the business, like most others, was affected by the recession which prevailed in New Zealand throughout most of 2009. It is probable that redundancy was in the wind, although Mrs Wilkie because of the way her termination was handled was left suspicious that the dismissal was aimed at her personally rather than the position she held as Housekeeper. She believes that others have been performing that role since she left.

[11] It is clear that the dismissal of Mrs Wilkie in the circumstances was unjustified. If for no other reason, the lack of consultation of any kind with her led to an absence of justification. A decision of the Employment Court given under the Employment Relations Act 2000 has held that in every case of redundancy consultation is a requirement of law; *Simpsons Farms Ltd v. Aberhart* [2006] ERNZ 825.

[12] Mrs Wilkie was not consulted at all with a view to exploring alternatives to redundancy, if there were any. She was simply told by email that her employment was at an end.

[13] I find that the dismissal of Mrs Wilkie was unjustified. The test of justification at s 103A of the Employment Relations Act 2000 has not been met. The actions of the employer and the way it acted were not what a fair and reasonable employer would have done in all the circumstances at the time the dismissal was notified. At the very least consultation should have taken place with Mrs Wilkie to explore whatever alternatives to redundancy there may have been.

[14] Mrs Wilkie did not contribute to the situation that gave rise to her personal grievance and she is therefore entitled to remedies without reduction for fault on her part.

[15] First, Mrs Wilkie was entitled to one weeks notice if her hours were to be reduced to 15. She is to be paid 40 hours at \$18 per week, or \$720. Second, without

the benefit of hearing from the company, I am unable to find any reason to reduce the award for lost wages from the usual three months or 13 weeks. The actual loss must be assessed on the basis of 15 hours per week, not 40. The company clearly intended to reduce hours for the future and it was able to do so by giving one weeks notice. Therefore the lost wages to be reimbursed shall be 13 weeks at 15 hours per week at \$18 per hour, or \$3510.

[16] Mrs Wilkie is an older age group and has found difficulty in securing new employment although recently she has gained some part time work. She was on a benefit to help make ends meet. I am satisfied she was quite upset by the sudden reduction from wages of \$700-\$800 per week to nothing at all. I assess compensation under s 123(1)(c)(i) of the Act at \$4,000 in relation to hurt feelings, loss of dignity and humiliation.

[17] The respondent company is also to make a contribution to costs for the services of Mr Craggs engaged by Mrs Wilkie for this investigation. The investigation time was minimal given the clear intention expressed by Mr Nathan from the start not to take part in it. I assess \$900 as a reasonable contribution to costs. The filing fee of \$70 is also to be reimbursed to Mrs Wilkie.

[18] In summary, the amounts to be paid by the respondent company Kudos Airport Apartments Ltd to Mrs Denise Wilkie are.

\$720 for the notice period required before reducing hours of work.

\$3,510 as reimbursement for 13 weeks lost wages.

\$4,000 as compensation for hurt feelings, loss of dignity and humiliation.

\$70 reimbursement of filing fee.

\$900 as a contribution to costs